



GP 1644
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GI 5238-DIV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : James Keith and Paul Schendel
Application No. : 08/892,407 Examiner: P. Nolan
Filing Date : July 15, 1997 Art Group: 1644
For : Method of Using IL-11 For Treating Various Diseases

August 11, 1998

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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SUPPLEMENTAL RESPONSE TO RESTRICTION REQUIREMENT

In response the Restriction Requirement mailed on March 26, 1998, a previous response having been mailed on April 23, 1998, Applicants provide the following remarks. The earlier response filed on April 23, 1998, is hereby withdrawn. Because election of species is required, Applicants hereby elect to prosecute the species of claim 7, antibiotic induced diarrheal diseases. However, the election requirement is traversed for the following reasons.

The Examiner has required election of a species among the species recited in claims 3 to 26. Applicants traverse this requirement because Claim 2 is generic to claims 3 to 5 and 7 to 26. Under the M.P.E.P., Applicants are permitted to claim a reasonable number of species in a single application. In fact, the Code of Federal Regulations and the M.P.E.P. explicitly state that the presence of a linking generic claim, such as claim 2, prevents restriction, even if otherwise proper. See 37 C.F.R. §1.141; M.P.E.P. §809.03. Thus, the election requirement is improper and should be withdrawn. Applicants request that the Examiner withdraw this requirement.